

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EBER G. RUTH,

Plaintiff,

v.

WARDEN, *et al.*,

Defendants.

Case No. 1:23-cv-00747-KES-BAM

ORDER DISMISSING ACTION WITHOUT
PREJUDICE FOR FAILURE TO PAY FILING
FEE

Doc. 14

Plaintiff Eber G. Ruth is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Doc. 1. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 23, 2023, the magistrate judge issued findings and recommendations recommending that plaintiff's motion to proceed in forma pauperis be denied and that he be required to pay the filing fee to proceed with his case, because he had accumulated at least three "strikes" under 28 U.S.C. § 1915(g) and did not satisfy the section's imminent danger exception. Doc. 7. On June 13, 2023, plaintiff filed a notice of interlocutory appeal. Docs. 8-10. On June 28, 2023, the Ninth Circuit dismissed the appeal for lack of jurisdiction. Doc. 11.

On June 30, 2023, the magistrate judge reset the deadline for plaintiff to file objections to the pending findings and recommendations. Doc. 12. On August 17, 2023, following plaintiff's failure to file objections, the then-assigned district judge issued an order adopting the findings and

1 recommendations, denying plaintiff's motion for leave to proceed in forma pauperis, and ordering
2 plaintiff to pay the filing fee in full within twenty-one days. Doc. 14. In that order, plaintiff was
3 warned that failure to pay the filing fee within the specified time would result in dismissal of this
4 action without further notice. *Id.* at 2.

5 On August 30, 2023, in lieu of paying the filing fee, plaintiff filed another notice of
6 interlocutory appeal. Docs. 15–17. On December 4, 2023, the Ninth Circuit dismissed the appeal
7 for failure to prosecute. *Id.*

8 More than a year has passed since the Ninth Circuit dismissed plaintiff's appeal, and
9 despite the Court's previous warning that failure to pay as ordered would result in dismissal of the
10 action (Doc. 14 at 2), plaintiff has still not paid the filing fee. Without such payment, the action
11 cannot proceed before the Court at this time.

12 Accordingly, IT IS ORDERED:

13 1. This action is **DISMISSED** without prejudice for failure to pay the filing fee; and
14 2. The Clerk of the Court is directed to close this case.

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17 IT IS SO ORDERED.

18 Dated: December 27, 2024



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UNITED STATES DISTRICT JUDGE